RENAS DEVELOPMENT SDN. BHD.

v.

PEMUNGUT HASIL TANAH, DAERAH TIMUR LAUT, PULAU PINANG

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[LAND REFERENCE NO. 19 OF 1979]
18 MAY 1984

LAND LAW: *Acquisition of land - Consent order - Whether an award under the Land Acquisition Act - Interest - Whether payable - If so, at what rate and from what date - Land Acquisition Act 1960, ss. 32, 37, 45, 47, 48.*

This is an application by way of notice of motion to determine the question, where the High Court has recorded a consent order requiring payment of an additional sum by way of compensation under s. 37 (1) of the Land Acquisition Act 1960 and if interest is payable, at what rate and from what date ought it to run.

The respondent objecting to the application submitted that the consent order in this case was an award and not a judgment and that no interest should be awarded and even if the respondent is liable to pay interest, this should be at the rate of 6% and should run from the date of service of the order of the Collector.

Held:

[1] The consent order was not an award within the meaning of the Act.

[2] The interest shall run from the date of its pronouncement and shall continue to run until the date of payment. The rate of interest was fixed at 6% p.a.

[Respondent to pay costs.]

Case referred to:
Parsons v. Mather & Platt Ltd. [1977] 2 All ER 715

Legislation referred to:
Land Acquisition Act 1960. ss. 32, 37 (1), 45 (2), 47, 48.
Rules of the High Court 1980, O. 42 r. 12.

For the applicant - Ho Sen Feek; M/s. Gan Teik Chee & Ho.
For the respondent - Mohd. Saari bin Yusoff; State Legal Adviser, Penang

JUDGMENT

Edgar Joseph Jr J:

Where the High Court has recorded a consent order requiring payment of an additional sum by way of compensation in a reference to it under s. 37 (1) of the **Land Acquisition Act 1960** ("the Act"), is interest payable on such sum and, if so, at what rate and from what date ought it to run? These are the questions arising on this application by way of notice of motion made by the person interested within the meaning of s. 2 of the Act which is now before me.

Encik Mohd. Saari bin Yusoff, the State Legal Adviser, who appeared for the Collector objected to the grant of interest on principle and, alternatively, on quantum. He argued that the consent order in this case was an award under the Act and not a judgment in an ordinary civil suit. He relied on ss. 32 and 48 of the Act which deal with the payment of interest by the Collector.

Section 32(1) and (1B) read as follows:

> When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before taking possession of such land, the Collector shall pay the amount awarded with interest thereon at the rate of six per cent per annum from the time of so taking possession until the time of such payment or deposit.
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> ...
>
> (1B) Where, in the case of an award the payment of which is subject to subsection (1) of s. 29A, seventy-five per cent of the amount of the award is not paid or deposited on or before taking possession of the land in respect of which the award is made, the Collector shall pay on the amount paid under subsection (3) or (4) of that section interest at the rate of six per cent per annum from the time of so taking possession until the time of payment or deposit of seventy-five per cent of the amount of the award.

Section 48 reads as follows:

> If the sum which in the opinion of the Court the Collecter ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collecter shall pay interest on such excess at the rate of six per cent per annum from the date on which the Collector took possession of the land to the date of payment of such excess to the Court or to the person interested.

He accordingly submitted that s. 48 being a special measure over-rides O. 42 r. 12 of the **Rules of the High Court 1980,** which is a general measure. He further submitted that it was in fact never agreed whether interest should be paid or even when payment of compensation would be made.

His primary submission therefore was that no interest should be awarded since there was nothing in the order to provide for its payment although the Court had power under s. 48 to make such an award. Alternatively, he submitted that even if the Collector is liable to pay interest, this should be at the rate of six per cent per annum and should run from the date of service of the order of the Collector, i.e., 7 July 1982, and not from date of pronouncement of the Order, i.e., 3 February 1982. The Collector in fact paid the amount of compensation referred to in the Order on 7 February 1983, after a number of reminders had been sent.

In my opinion, the consent order was certainly not an award within the meaning of the Act.

Section 47(1) of the Act provides that every decision shall be in writing, signed by the Judge and by the assessor or assessors, if any, concurring therein.

Section 47(2) provides for the contents of an award of compensation comprised in such decision.

Section 47(3) goes on to provide that every written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a judgment within the meaning of the law for the time being in force relating to civil procedure.

In the instant case, the consent order was not signed by the assessors nor does it reflect their concurrence. In fact, it is obvious from the record that no assessors played any part in the proceedings which ended in the consent order being recorded.

In my opinion, therefore, ss. 32 and 48 of the Act can have no applications to the questions before me.

The result is that O. 42 r. 12 of the **Rules of the High Court 1980,** applies. I am fortified in this view by s. 45(2) of the Act which provides that:

> Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.

Accordingly, on the authority of *Parsons v. Mather & Platt Ltd.* [1977] 2 All ER 715, I hold that interest on the additional sum referred to in the consent order shall run, not from the date it was perfected or served, but from the date of its pronouncement and shall continue to run until the date of payment thereof. In exercise of my discretion under O. 42 r. 12 of the **Rules of the High Court 1980,** I further hold that the rate of such interest should be six per cent per annum, applying by analogy the rate prescribed by s. 48 of the Act.

The costs of this application will have to be paid by the Collector to the applicant.

Also found at [1984] 2 CLJ 122